

### **REMARKS**

Claims 1-5 are pending and under examination in the subject application. By this Amendment, applicants have canceled claim 2 without disclaimer or prejudice and have amended claims 1 and 4. Accordingly, claims 1 and 3-5 will be pending and under examination in the subject application upon entry of this Amendment.

In view of the remarks below, applicants maintain that the Examiner's rejections and objections have been overcome, and respectfully request that they be withdrawn.

#### **Formalities**

##### **Drawings**

The Examiner objected to the drawings as filed on October 11, 2001. In response, applicants hereby submit as **Exhibit 1** corrected copies of Figures 1-9.

##### **Priority**

The Examiner requested that the priority statement be updated to include all priority applications and their respective statuses. In response, applicants note that the amendment to the specification adds all proper information as requested by the Examiner.

#### **Rejections Under 35 U.S.C. §112, First Paragraph**

The Examiner rejected claims 1 and 3-5 under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time the application was filed. Specifically, the Examiner alleges that no example, other than the nucleic acid sequence encoding a mutated collagen X, Col10-13del, of the claimed genus of nucleotides that encode for a mutant collagen X are disclosed in the specification.

In response, and without conceding the correctness of the Examiner's rejection, applicants note that claim 1 has been amended to recite "set forth in SEQ ID NO:2", thereby rendering the Examiner's rejection moot.

In view of these remarks, applicants maintain that claims 1 and 3-5 are adequately supported by the disclosure and satisfy the written description requirement of 35 U.S.C. §112, first paragraph.

**Rejection Under 35 U.S.C. §112, Second Paragraph**

The Examiner rejected claims 2, 4 and 5 under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response, and without conceding the correctness of the Examiner's rejection, applicants note that claim 2 has been canceled and claim 4 has been amended to recite methods steps which relate back to the preamble of the claim, thereby rendering the Examiner's rejection moot.

In view of these remarks, applicants maintain that claims 4 and 5 satisfy the requirements of 35 U.S.C. §112, second paragraph, and respectfully requests that the rejection be withdrawn.

**Rejections Under 35 U.S.C. §102(b)**

The Examiner rejected claims 1 and 3 under 35 U.S.C. §102(b) as allegedly anticipated by Warman et al. and claims 1 and 3-5 under 35 U.S.C. §102(b) as allegedly anticipated by Jacenko et al. Specifically, the Examiner alleges that all claim limitations may be found in the cited references.

In response but without conceding the correctness of the Examiner's rejections, applicants note that claim 1 has been amended to recite "set forth in SEQ ID NO:2",

thereby rendering the Examiner's rejection moot. Neither the Warman or the Jacenko references disclose the nucleic acid sequence as set forth in SEQ ID NO:2 in this application.

In view of these remarks, applicants maintain that claims 1 and 3-5 satisfy the requirements of 35 U.S.C. §102(b).

#### Double Patenting

The Examiner rejected claims 1 and 3 under non-statutory obviousness-type double patenting as being unpatentable over claims 6-7 of U.S. Patent No. 6,369,295. The Examiner further rejected claim 2 under 35 U.S.C. §101, statutory double patenting, as claiming the same invention as that of claim 6 of U.S. Patent No. 6,369,295.

In response, applicants hereby submit as **Exhibit 2** a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) and 37 C.F.R. 3.73(b). Applicants further note that claim 2 has been canceled. Applicants maintain that the submission of the Terminal Disclaimer overcomes the rejection based on non-statutory obviousness type double patenting and request that the Examiner withdraw the rejection.

#### Summary

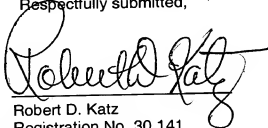
For the reasons set forth hereinabove, applicants respectfully request that the Examiner reconsider and withdraw the rejections and objections, and solicit allowance of the pending claims.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invite the Examiner to telephone him at the number provided below.

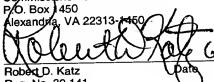
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No fee, other than the \$55.00 one-month extension fee, is deemed necessary in connection with the filing of this Amendment. However if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents P.O. Box 450 Alexandria, VA 22313-1450	
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